

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

ORDER

Criminal No. 09-73 ADM/FLN

Jiver Chino Morales,

Defendant.

Andrew S. Dunne, Esq., United States Attorney's Office, Minneapolis, MN, on behalf of Plaintiff.

Jiver Chino Morales, pro se.

I. INTRODUCTION

Jiver Chino Morales ("Morales") has filed a Motion and Questionnaire for Reduction of Sentence Pursuant to 18 U.S.C. § 3582(c) [Docket No. 45] ("Motion"). The Government has filed a Response to Defendant's Motion For Sentence Reduction under 18 U.S.C. § 3582(c) [Docket No. 46] ("Response"). For the reasons set forth below, Morales' Motion is denied.

II. BACKGROUND

On May 19, 2009, Morales pled guilty to distribution of 50 grams or more of cocaine base in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A). Plea Agreement [Docket No. 33]. Based upon Morales' adjusted offense level, the applicable guideline range of imprisonment was 70–87 months. On October 2, 2009, Morales was sentenced to a term of imprisonment of 50 months, followed by a three-year term of supervised release. Sentencing Judgment [Docket No. 42] 2. The sentence was a downward variance from the advisory guideline range under 18 U.S.C. § 3553(a).

On October 21, 2010, the U.S. Sentencing Commission lowered the offense levels for cocaine base offenses stated in United States Sentencing Guidelines (U.S.S.G.) § 2D1.1. As of November 1, 2011, this sentence reduction was made to apply retroactively. On October 31, 2011, this Court received Morales' Motion requesting the retroactive reduction of his cocaine base sentence.

III. DISCUSSION

Under U.S.S.G. §1B1.10, a court has discretion to reduce a defendant's sentence as a result of an amended guideline range. In considering a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2), courts must determine the following: (1) the amended guideline range and what sentence would have been given if the amended guideline had applied at the time of original sentencing; and (2) whether to exercise its discretion to reduce the sentence, as adjudged by the factors in 18 U.S.C. § 3583(a). United States v. Hasan, 245 F.3d 682, 684–85 (8th Cir. 2001). A sentence may not be reduced below an amended guideline range unless the Government previously moved for a downward departure based on substantial assistance.¹

This Court's original sentence included a downward variance from the applicable sentencing guideline range, so the sentence was not “*based* on a sentencing range that has subsequently been lowered by the Sentencing Commission.” 18 U.S.C. § 3582(c)(2) (emphasis added). Because the sentence was not based on the previous guideline range, the subsequent guideline amendment does not affect Morales' sentence. Furthermore, the Government has not

¹“If the term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing pursuant to a government motion to reflect the defendant's substantial assistance to authorities, a reduction comparably less than the amended guideline range . . . may be appropriate.” U.S.S.G. § 1B1.10(b)(2)(B).

previously moved for a downward departure due to substantial assistance. Therefore, Morales' sentence is not affected by the November 1, 2011 retroactive sentence reduction, and his Motion is denied.

IV. CONCLUSION

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Defendant's Motion and Questionnaire for Reduction of Sentence Pursuant to 18 U.S.C. § 3582(c) [Docket No. 45] is **DENIED**.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: November 30, 2011.